



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 1, 1998

Mr. Douglas A Poneck
Escamilla & Poneck, Inc.
1200 South Texas Building
603 Navarro Street
San Antonio, Texas 78205-1826

OR98-2081

Dear Mr. Poneck:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 117907.

The San Antonio Housing Authority, which you represent, received a request for six categories of information concerning a former employee and benefit recipient. Of the responsive information, you seek to withhold from disclosure a memorandum and its three attached exhibits. The memorandum is from a staff attorney to the Senior Vice President for Housing Operations concerning possible benefit misrepresentations and subsidized housing under payments. You claim the information is excepted from required public disclosure by sections 552.101, 552.103, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

Section 552.103(a) excepts from disclosure information:

- (1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and
- (2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

A governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The governmental body must meet both prongs of this test for information to be excepted under 552.103(a).

You argue in this instance that the San Antonio Housing Authority "is presently attempting to recoup alleged financial benefits received by a former employee who is alleged not to have fully disclosed her annual compensation." You state that "[w]hile no litigation is presently pending, this information should not be disclosed because SAHA may have no alternative but to pursue all available civil and criminal remedies at its disposal, including filing a lawsuit." We believe you have demonstrated that litigation is reasonably anticipated. Open Records Decision No. 557 (1990). The requested information also relates to that anticipated litigation. You may withhold the submitted records under section 552.103.

We note, however, that there are four documents that were obtained from the potential opposing party, the signed certifications in Exhibit C. Generally, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Furthermore, these documents are not protected by your other claimed exceptions. *See* Open Records Decision Nos. 647 at 4 (1996) (work product privilege does not extend to "facts the attorney may acquire"), 574 (1990) (basically factual communications from attorney to client are not protected by 552.107). Consequently, except for the four pages in Exhibit C, you may withhold the memorandum.

Because we make a determination under section 552.103, we do not address your additional arguments against disclosure for the remaining information. We note, however, that some of the requested information may be confidential by law and must not be released even after litigation has concluded. *Compare* Open Records Decision No. 373 (1983) *with* Open Records Decision No. 523 (1989) (drawing a distinction between confidential "background financial information furnished to a public body about an individual" and "the basic facts regarding a particular financial transaction between the individual and the public body"). If you receive a subsequent request for the information, you should re-assert your arguments against disclosure at that time. Gov't Code § 552.352 (distribution of confidential information is criminal offense).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous

determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Don Ballard". The signature is written in a cursive, slightly slanted style.

Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref: ID# 117907

Enclosures: Submitted documents

cc: Ms. Patricia Rodriguez
Cornwell & Rodriguez
2161 N.W. Military Highway, Suite 211
San Antonio, Texas 78213
(w/o enclosures)